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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date:	**Enrolled**	Bill No:	**Assembly Bill 1422**
Tax Program:	**Sales and Use Tax**	Author:	**Committee on Jobs, Economic Development, and the Economy**
Sponsor:	**Author**	Code Sections:	**PRC 26003**
Related Bill:		Effective Date:	**01/01/14**

BILL SUMMARY

This bill clarifies that an out of state or overseas entity can apply for a sales and use tax exclusion with the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) if that entity commits to, and demonstrates that, it will be opening a California manufacturing facility.

ANALYSIS

CURRENT LAW

Except where the law provides a specific exemption or exclusion, California's Sales and Use Tax Law[1] imposes the sales tax on all retailers for the privilege of selling tangible personal property at retail in this state or the use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer.

Generally, sales or use tax applies to the sale or purchase of tangible personal property to persons who use the property to manufacture, produce, or process tangible personal property. A manufacturer's taxable purchases include machines, tools, furniture, forklifts, generators, and office equipment.

However, existing law[2] contains a specific sales and use tax exclusion for tangible personal property purchased by "participating parties" for certain approved manufacturing "projects." Under the law,[3] the CAEATFA is authorized to approve sales and use tax exclusions for tangible personal property utilized for the design, manufacture, production, or assembly of, advanced transportation technologies or alternative source products, components, or systems, which includes renewable energy equipment, combined heat and power equipment, alternative transportation equipment, and advanced manufacturing projects. The law does not require that the tangible personal property be purchased or utilized in this state for purposes of the sales and use tax exclusion.

Under the law,[4] a "participating party" means a person, federal or state agency, department, board, authority, or commission, state or community college, or university, or a city or county, regional agency, public district, school district, or other political entity *engaged in business or operations in the state*, whether organized for profit or not for

[1] Part 1, Division 2 (commencing with Section 6001) of the Revenue and Taxation Code (RTC).
[2] RTC Section 6010.8.
[3] Public Resources Code (PRC) Section 26011.8.
[4] PRC Section 26003(a)(7).

profit, that applies for financial assistance from CAEATFA for the purpose of implementing a project.

Participating parties apply to the CAEATFA to receive the sales and use tax exclusion. For approval of qualifying projects, the law[5] requires the CAEATFA to consider a variety of factors related to whether the project results in a net benefit to the State, with consideration to both fiscal and environmental benefits.

The law[6] provides a $100 million cap for these sales and use tax exclusions.

California's sales and use tax rates. Effective January 1, 2013, a statewide 7.5% sales and use tax rate applies to tangible personal property sales and purchases. The following table shows California's various sales and use tax rate components (the table excludes voter-approved city and county district taxes):

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes (Revenue and Taxation Code (RTC) Sections 6051, 6051.3, 6201, and 6201.3)
1.0625%	Local Revenue Fund 2011	Realignment of local public safety services (RTC Sections 6051.15 and 6201.15)
0.25%	State (Fiscal Recovery Fund)	Repayment of the Economic Recovery Bonds (RTC Sections 6051.5 and 6201.5)
0.25%	State (Education Protection Account)	Until 01/01/17, schools and community college funding (Section 36, Article XIII, State Constitution)
0.50%	State (Local Revenue Fund)	Local governments to fund health and welfare programs (RTC Sections 6051.2 and 6201.2)
0.50%	State (Local Public Safety Fund)	Local governments to fund public safety services (Section 35, Article XIII, State Constitution)
1.00%	Local (City/County) 0.75% City and County 0.25% County	City and county general operations (RTC Section 7203.1, operative 7/1/04); Dedicated to county transportation purposes
7.50%	Total Statewide Rate	

PROPOSED LAW

This bill clarifies the definition of "participating party" for purposes of the sales and use tax exclusions approved by CAEATFA. It includes an entity located outside of the state, including an entity located overseas, as a participating party eligible to apply for financial assistance in the form of the sales and use tax exclusion if the participating party commits to, and demonstrates that, the party will be opening a manufacturing facility in the state.

The bill also redefines the term "project" for purposes of the sales and use tax exclusion to specify that the qualifying tangible personal property must be utilized in this state.

[5] PRC Section 26011.8(d).
[6] PRC Section 26011.8(h).

In addition, the bill states the Legislative intent that this change clarifies existing law and ensures that an out-of-state entity or overseas entity is eligible to apply for financial assistance.

Also, the bill deletes a required report to the Legislature by the Governor's Office of Business and Economic Development related to jobs in advanced manufacturing, and makes other technical, nonsubstantive changes.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author to clarify that "participating party" includes out-of-state or overseas entities committed to opening a manufacturing facility in California. According to the author's office, recent legislation that expanded CAEATFA's authority to approve sales and use tax exclusions was enacted to promote the creation of California-based manufacturing, California-based jobs, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. The author's office notes that CAEATFA's exclusion authority in law was not intended to exclude otherwise qualifying out-of-state and overseas entities desiring to open a manufacturing facility in California, and this bill makes that clear.

2. **Amendments.** The **August 26, 2013 amendments** removed the requirement that the qualifying tangible personal property must be purchased in this state and deleted the provision that would have allowed any unused exclusions that exceed $100 million in a year to be carried over to the next fiscal year. The **July 8, 2013 amendments** redefined the term "project" for purposes of the sales and use tax exclusion to specify that the tangible personal property must be purchased and used in this state to qualify. The **June 19, 2013 amendments** required that any portion of the allowable $100 million sales and use tax exclusion not granted in a calendar year be available to be granted in the subsequent year, provided the total amount available in any calendar year does not exceed $200 million. The **June 4, 2013 amendments** deleted the provision that required the CAEATFA to work with the University of California or the California State University to perform a peer review of the net benefits test currently used to evaluate applicants for the exclusion.

3. **Any change to the PRC's definition of "project" or "participating party" can have a direct sales and use tax implication.** The exclusion provided in the RTC is linked directly with the term "project" and "participating party" as defined in the PRC. When either definition is changed within the context of the PRC, it can result in a direct state and local sales and use tax revenue impact. However, the law caps the allowable sales and use tax exclusions to $100 million annually.

4. **CAEATFA is the exclusion's primary administrator.** Consequently, the bill's enactment will have a minimal effect on the BOE's administrative duties.

COST ESTIMATE

The BOE will incur some absorbable costs to notify taxpayers, make changes to the BOE's website and publications, and respond to inquiries.

REVENUE ESTIMATE

For each calendar year, the allowable sales and use tax exclusion for all CAEATFA-approved projects, including any additional projects approved under this bill, is capped at $100 million.

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